

the area for surgery, even though the patient may be moving. Thus, Evans compensates for motion of the patient by mechanically adjusting the position of the surgical instrument to keep it constant with respect to the area for surgery.

As Examiner recognizes, Evans does not disclose a combination of the above system with a scanning protocol. Furthermore, Evans does not disclose updating a scanning protocol to compensate for movement/motion of the subject, as required by the claims.

Indeed, Evans discloses a very different system from what is claimed by the Applicant here. Applicant does not claim mechanically moving any instruments to compensate for movement of the subject. Applicant instead claims updating the scanning protocol used to gather an image to compensate for motion of a subject. This is very different from physically moving an instrument to account for motion of a patient. For example, in the context of magnetic resonance imaging (MRI), updating the scanning protocol involves changing the basic waveforms emitted by the coils within the MR scanner to compensate for motion. Thus, Applicant claims updating the way in which the data for an image is acquired, as the image is being acquired, to compensate for motion. This is very different from Evans, which is focused on physically moving an surgical instrument to maintain a constant position relative to the area for surgery.

Cosman discloses a system for tracking motion of a patient in combination with a scanning protocol. Examiner states that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the disclosure of Evans in light of Cosman. However, this combination would not satisfy the claims.

While Cosman discloses use of a scanning protocol, the claims require more than mere use of cameras and a scanning protocol to obtain desired positioning or effective graphics display. The claims require updating a scanning protocol to compensate for movement/motion of the subject. Taken together, Evans and Cosman do not disclose this requirement of the claims. Examiner acknowledges that Evans does not disclose a scanning protocol, and therefore plainly does not disclose updating a scanning protocol. While Cosman discloses use of a scanning protocol, Cosman does not disclose updating it to compensate for movement of a

subject. Instead, Cosman generally discloses using data about the movement of the subject for one of two purposes. (col. 1, line 63 to col. 2, line 13.) The first purpose is to compare the data being obtained with previously stored image data so that surgical instruments can be appropriately positioned. (col. 1, line 63 to col. 2, line 3.) The second purpose is to display the change in position of the area of interest, so that the surgeon can re-position the surgical instruments, rather than having them moved automatically as disclosed in Evans. (col. 2, line 4 to col. 2, line 13.) Thus, Cosman discloses a substitute for the approach described in Evans and therefore one would not combine Cosman with Evans. More importantly, neither of the approaches described in Cosman involves updating the way in which the data for an image is acquired, as the image is being acquired, to compensate for motion, as required by the claims.

All the independent claims require that a scanning protocol be updated to compensate for movement/motion of the subject, but a combination of Evans and Cosman would not disclose this feature. Consequently, none of the independent claims would be unpatentable under 35 U.S.C. 103(a) in view of this combination. The dependent claims which are dependent on those independent claims similarly would not be unpatentable under 35 U.S.C. 103(a). Applicant respectfully submits that the claims are in condition for allowance.

Applicant has not addressed all of Examiner's positions because Applicant believes the remarks above have made it unnecessary to address certain positions. In doing so, Applicant does not imply agreement with Examiner and does not intend any surrender of rights. All of Examiner's rejections are based on a combination of Evans with Cosman, which Applicant submits does not render the claims unpatentable under 35 U.S.C. 103(a) for at least the reasons set forth above.

Enclosed is a \$60 check for the Petition for Extension of Time fee. Please apply any other charges or credits to deposit account 06-1050.

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